

FINAL COMMENTS OF SCAO – Judge Chad Schmucker

Thank you Chairman Walsh and committee members for allowing me another opportunity to talk about the Judicial Resources Recommendations.

There are **five** points that I would like to make today.

1. The State Court Administrative Office took many steps to be objective, inclusive, and fair. These recommendations have the unanimous support of the Supreme Court. And as you heard today, the 3 judicial associations.
 2. The recommendations are not based on population or even total caseload, but are based on the weighted caseload of every court. This is the methodology recommended above all others by the National Center for State Courts.
 3. We are not here to tell courts that they have too many or too few magistrates, referees, and/or law clerks (quasi-judicial officers). Our study and recommendations only address the number of judges needed in each court.
 4. Local courts should not need to hire visiting judges to keep up with the caseload.
 5. Possible backlogs and delays - These reductions will not result in courts being underjudged. They will result in courts having the correct number of judges.
- There is no reason to expect delays.

1. The JNAC and JRR Process

First I would like to begin by emphasizing that we took extra measures to be objective, inclusive, and fair. Every time we recommend reductions, our methodology is criticized

by those who may be cut. We took many steps this time to improve the process and minimize perceived flaws:

- We involved the National Center for State Courts – the leading national authority on courts and judicial workload.
- We involved Michigan judges and court administrators by creating a Trial Court Assessment Committee, which included seven judges and three court administrators.
- We involved 25 experienced judges in the subcommittee review process.
- We did not hand-pick the judges to participate on these committees. They were picked with input from the judicial associations and represented judges across the state. The chair of the Judicial Needs Assessment Committee, Chief Circuit Judge Thomas Solka of Marquette County, was one of the leading critics of the 2009 Judicial Resources Recommendations report.
- The judicial time study involved every single court and judge in the state of Michigan.
- The National Center for State Courts sent a survey to all judges asking if they had sufficient time to handle their cases. The judges indicated that they did.

In summary, the process was open, inclusive, and fair. The Judicial Needs Assessment Committee unanimously supported the methodology. The SCAO believes the

methodology is fair. If two communities have the same weighted caseload, they should have the same number of state-paid judges.

2. Weighted Caseload

I would like to emphasize again that we did not determine the number of judges based on the community's population or simply on their total caseload. Cases differ and total caseload can be misleading because serious crimes take longer to process than traffic tickets. We used a weighted caseload, which takes into account the amount of time that different cases take.

The weighted caseload formula also takes into account time for: administration of the courts, education, conferences, research and writing, holidays, weekends, sick leave, travel between courts, and other factors.¹

We have heard that if these reductions are made, many problem-solving courts may need to be eliminated. Let me share with you some facts about problem-solving courts in Michigan. There are about 145 problem-solving courts in the state.² Some of these

¹ The weighted caseload formula includes average travel time, but several of our multi-county circuits involve substantial travel time. We considered this in our extended analysis. If these recommendations are adopted, the four Upper Peninsula circuits with significant travel time will still have the lowest workload per judge: .47, .57, .58, and .74. We will also be encouraging these courts to enter into concurrent jurisdiction plans and utilize their new video conferencing technology to minimize travel by the judges. Furthermore, because travel time is included in the weighted caseload, no court will have to close a courthouse as a result of these recommendations, even if two courts are being consolidated into one.

² All of these problem-solving courts, and the time spent on them, were included in the time study.

operate successfully in areas that are “underjudged.”³ There is no reason to believe that we will lose drug courts if these changes are adopted.

3. Magistrates, Referees, and Law Clerks - Quasi Judicial Officers

How we account for magistrates and referees has always been a difficult issue. If a judge has a referee and a law clerk, you can not compare that judge’s workload to a judge who lacks any help. That is why the time studies have always included not only judges, but referees, magistrates, and law clerks. We need to know how much judicial work is done in the courts and how much of it is done by judges.

Our results identify courts that have more judges than they need. Many of these courts also have an above-average number of quasi-judicial officers; however, there are about ten who have extra judges, but fewer quasi-judicial officers. The Judicial Needs Assessment Committee looked at an alternative method of taking this into account, whereby the actual number of quasi-judicial officers in each court is deducted from the judicial need. This method was rejected, however, because it punishes courts that have more quasi-judicial officers and rewards courts that have fewer quasi-judicial officers. We believe courts with the same weighted caseload should have the same number of judges.

³ These counties operate an adult drug court and have a judicial need: Jackson (+.05), Oakland (+6.5), Macomb (+6.8), Livingston (+0.9), Genesee (+3.0), Kent (+4.1), Ottawa (+0.8), Ionia/Montcalm (+0.0).

4. Need for Visiting Judges

Some courts have wondered what will happen when the remaining judges are on vacation or at judicial conferences. We should remember that our formula takes into account vacations, holidays, and judicial education. Our formula is based on 215 working days per year – 43 weeks. Will judges need to schedule differently when their benchmates are on vacation? Of course they will. As a circuit court judge, I can tell you that when other judges were going to be gone for conferences or vacation, I would try to avoid scheduling a murder trial or a medical malpractice trial. If I did, I would know that it was going to be a very busy week.

These courts should not have any higher expenses for visiting judges than the other courts that already have the appropriate number of judges.⁴ The average amount spent on

⁴ The following counties need approximately 3 judges and spend, on average, \$416 per year on visiting judges.

Barry	2.5	\$270
Cass	2.5	\$479
Branch	2.6	\$500

When the following counties go from 4 to 3 judges, they should not have any substantial visiting judge expenses.

Benzie/Manistee	2.6
Alpena/Montmorency	2.6
Lake/Mason	2.8

The following counties need approximately 4 judges and spend, on average, \$504 per year on visiting judges.

St Joseph	3.9	\$83
Charlevoix/Emmet	4.0	\$1,112
Clare/Gladwin	4.4	\$318

When the following counties go from 5 to 4 judges, they should not have any substantial visiting judge expenses.

Ogemaw/Roscommon	3.3
Lapeer	3.7
Newaygo/Oceana	4.0

The following counties need approximately 5 judges and spend, on average, \$1,097 per year on visiting judges.

Eaton	4.4	\$2,996
Allegan	4.9	\$98
Lenawee	5.4	\$198

When the following counties go from 6 to 5 judges, they should not have any substantial visiting judge expenses.

Clinton/Gratiot	4.6
Crawford, Kalkaska/Otsego	4.6

visiting judges in nine courts that currently have the appropriate number of judges of 3, 4, or 5 judges, is \$673 per year. That is less than \$1,000 per year for visiting judges.

5. Delays and Backlogs

If these reductions are approved, these courts will not be “underjudged.” They will simply have the same amount of judicial resources as other similar counties. This is not to say that this will not involve some change by the courts and judges. And change can be unsettling. However, this should not result in unfair hearings, backlogged dockets, or overworked judges. In fact, we have found that courts with a judicial need do not have any more difficulty meeting the time guidelines. Further, for all counties where we recommend a reduction, the per judge workload will be 1.10 or less; only 5 counties currently have a per judge workload higher than this.

Changes From Our Initial Recommendation

Based on additional data we received from the 50th District Court in Pontiac, we now recommend a reduction of one judge, not two. There has been a dramatic change in the caseload because the Oakland County Sheriff’s Department has taken over for the Pontiac Police Department. We will reevaluate this court in two years.

Although we continue to recommend reducing judges in both Huron and Sanilac Counties, we no longer recommend combining those counties into a single circuit. We believe these circuits could operate most efficiently if they remain separate.

Conclusion

The State Court Administrative Office and the National Center for State Courts, with unanimous approval by the Michigan Supreme Court, the judicial associations, and the Judicial Needs Assessment Committee, have done the heavy lifting of determining where judgeships should be added and eliminated in the trial courts. We believe our recommendations are objective and fair, and based on a process that included all judges. The Governor supports eliminating judgeships where they are not needed. Since 1988, we have gained a net of over 30 trial court judgeships, sometimes in areas where there was not a judicial need. I encourage you to take the first step in equitably distributing judicial resources in Michigan by passing these bills.

Thank you, and as always I would be glad to answer any questions you have.

